



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 30 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

William J. Anaya  
Arnstein & Lehr LLP  
120 South Riverside Plaza, Suite 1200  
Chicago, Illinois 60606

Re: Cleveland Corp., Zion, Illinois

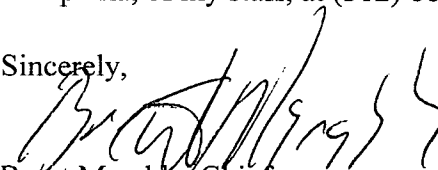
Dear Mr. Anaya,

Enclosed is the Administrative Consent Order (ACO) which resolves the Finding of Violation issued to Cleveland Corp. on November 19, 2008. Your client should retain this copy for his records.

The terms of this Order became effective on the date of signature by the Director, and are binding for two years from the effective date. Failure to comply with this Order may subject Cleveland Corp. to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

Should you have any questions, please contact Mr. Erik Olson, Associate Regional Counsel, at (312) 886-6829, or Ms. Natalie Topinka, of my staff, at (312) 886-3853.

Sincerely,

  
Brent Marable, Chief

Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosures: ACO

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>EPA-5-09-113(a)-IL-06</b>
	)	<b>Proceeding Under Sections</b>
<b>Cleveland Corporation</b>	)	<b>113(a)(3) and 114(a)(1)</b>
<b>42810 North Greenbay Road</b>	)	<b>of the Clean Air Act</b>
	)	<b>42 U.S.C. §§ 7413(a)(3) and 7414(a)(1)</b>
<b>Zion, IL</b>	)	
	)	
	)	
	)	
	)	

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**Administrative Consent Order**

1. The Director of the Air and Radiation Division ("Director"), U.S. Environmental Protection Agency, Region 5 ("EPA"), is entering into this Administrative Consent Order ("Order") with Cleveland Corporation, ("Cleveland Corp."), 42810 North Greenbay Road, Zion, Illinois, under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413(a)(3), 7414(a)(1).

**I. Statutory and Regulatory Background**

2. Section 113(a)(3)(B) of the Act, 42 U.S.C. § 7413(a)(3)(B), authorizes the Administrator of EPA to issue an order requiring compliance with Title VI of the Act to any person who has violated or is violating any requirement of Title VI. The Administrator of EPA has delegated her order authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region 5, has delegated his order authority to the Director pursuant to EPA Region 5 Delegation 7-6-A.

3. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The Administrator of EPA has delegated her information gathering authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region 5, has delegated his information gathering authority to the Director pursuant to EPA Region 5 Delegation 7-8.

4. Title VI of the Act, 42 U.S.C. § 7671, *et seq.* provides for the protection of stratospheric ozone. Section 608(b) of the Act, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of class I and II substances. Class I and II substances include refrigerants containing chlorofluorocarbons (“CFCs”) and hydrochlorofluorocarbons (“HCFCs”). In the May 14, 1993, Federal Register, 58 Fed. Reg. 28660, EPA promulgated such regulations covering the safe disposal of CFCs and HCFCs from small appliances and motor vehicle air conditioners. These regulations for protection of the stratospheric ozone, recycling and emissions reduction are found in 40 C.F.R. Part 82, Subpart F.

5. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances and motor vehicle air conditioners (MVACs) must either recover the refrigerant in accordance with specific procedures or verify with signed statements that the refrigerant was properly recovered prior to receipt of the small appliance or MVAC. See 40 C.F.R. § 82.156(f). If verification statements are used then the scrap recycler must notify the suppliers of the small appliance or MVAC of the need to properly recover the refrigerant. See 40 C.F.R.

§ 82.156(f)(3). The scrap recycler must keep verification statements on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

6. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define a "small appliance" as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under the counter ice makers, vending machines, and drinking water coolers. See 40 C.F.R. § 82.152.

7. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define motor vehicle air conditioners (MVACs) as mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. See 40 C.F.R. §§ 82.32 and 82.152.

## **II. Findings**

8. Cleveland Corp. owns and operates a scrap metal recycling facility at 42810 North Greenbay Road, Zion, Illinois. Cleveland Corp. is a corporation organized and doing business in Illinois. Cleveland Corp. is a person as defined by 40 C.F.R. § 82.152.

9. Cleveland Corp. is a person who takes the final step in the disposal process of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

10. On July 15, 2008, EPA conducted an inspection of Cleveland Corp.

11. On August 20, 2008, EPA sent Cleveland Corp. a request for information pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a). EPA requested information related to its compliance with the safe disposal requirements of 40 C.F.R. § 82.156.

12. On October 22, 2008, Cleveland Corp. responded to EPA's request for information.

13. EPA has determined that Cleveland Corp. accepted small appliances without recovering refrigerant. EPA has determined that Cleveland Corp. did not obtain verification statements that met the requirements of 40 C.F.R. 82.156(f) for these small appliances.

14. On November 19, 2008, EPA sent Cleveland Corp. a Finding of Violation ("FOV"). EPA informed Cleveland Corp. in the FOV that EPA had determined that Cleveland Corp. was not in compliance with 40 C.F.R. § 82.156(f) because it did not recover refrigerant and did not obtain proper verification statements. EPA offered Cleveland Corp. an opportunity to confer with EPA on the alleged violations, and on December 16, 2008, representatives of Cleveland Corp. and EPA met and discussed the FOV and alleged violations.

15. Cleveland Corp. denies that it was not in compliance with 40 C.F.R. § 82.156(f) as alleged.

16. On August 17, 2009, representatives of Cleveland Corp. and EPA discussed the proposed Order and agreed to the compliance program identified in Section III of this Order.

### **III. Compliance Program and Agreement**

17. Cleveland Corp. must comply with 40 C.F.R. Part 82. Additionally, Cleveland Corp. must take the following actions by the dates specified and maintain compliance with paragraphs 18 through 23, below, for two years after the effective date of this Order for any small appliance or MVAC that it accepts at its facility.

18. By September 30, 2009, Cleveland Corp. must no longer accept small appliances or MVACs with cut or dismantled refrigerant lines unless its supplier can provide the certification identified in paragraph 19 below.

19. By September 30, 2009, Cleveland Corp. must notify its suppliers in writing that it will not accept small appliances or MVACs with cut or dismantled refrigerant lines unless the suppliers can certify that the refrigerant was properly evacuated prior to cutting or dismantling the refrigerant lines. Cleveland Corp. will have its suppliers use the verification statement included as Attachment 1 to this Order if the supplier claims that refrigerant was previously evacuated.

20. By September 30, 2009, Cleveland Corp. must notify its suppliers in writing that it will provide refrigerant recovery services at no additional cost or reduction in the value of the scrap. Cleveland Corp. may satisfy the notice requirements of paragraphs 19 and 20 with a sign that is prominently displayed at its weigh station during the period of time that this Order is effective.

21. EPA acknowledges that Cleveland Corp. has purchased the appropriate equipment to recover refrigerant for small appliances and MVACs. By September 30, 2009, Cleveland Corp. must use that equipment to recover refrigerant from small appliances and MVACs according to the terms herein described.

22. Cleveland Corp. must have the refrigerant recovered by a properly trained individual. If that individual is an employee of Cleveland Corp., then Cleveland Corp. will ensure that the individual is properly trained to follow the manufacturer's instructions in using the equipment identified in paragraph 21.

23. By September 30, 2009, Cleveland Corp. must use the small appliance log included as Attachment 2. Cleveland Corp. will retain copies of receipts for all refrigerant it collects and sends to another company for reclamation. Cleveland Corp. will also document the number of small appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

24. By October 31, 2009, Cleveland Corp. must provide EPA with proof of its compliance with the notice requirements of paragraphs 19 and 20.

25. By March 31, 2010, September 30, 2010, March 31, 2011, and September 30, 2011, Cleveland Corp. must submit to EPA a copy of its small appliance log, the information required by paragraph 23 and any verification statements used pursuant to paragraph 19 above.

26. Cleveland Corp. must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
EPA, Region 5  
77 West Jackson  
Chicago, Illinois 60604

#### **IV. General Provisions**

27. Cleveland Corp. denies all alleged liability but agrees to the terms of this Order.

28. Cleveland Corp. will not contest the authority of EPA and it to enter into

this agreement. Cleveland Corp. waives a hearing on the matters alleged in the FOV, and consents to the entry of this Order.

29. This Order does not affect Cleveland Corp.'s responsibility to comply with other federal, state, and local laws.

30. This Order does not restrict EPA's authority to enforce any violations of the Act.

31. Failure to comply with this Order may subject Cleveland Corp. to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

32. Cleveland Corp. may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Cleveland Corp. fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

33. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response(s) to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.



34. The terms of this Order are binding on Cleveland Corp., its assignees, and successors. Cleveland Corp. must give notice of this Order to any successors in interest to Cleveland Corp. prior to transferring any ownership interest in Cleveland Corp. and must simultaneously verify to EPA that it has given the notice.

35. EPA may use any information submitted under this Order in an administrative, civil, judicial, or criminal action.

36. This Order is effective on the date of signature by the Director. This Order will terminate two years from the effective date, provided that Cleveland Corp. has complied with all terms of the Order throughout its duration.


37. Each person signing this Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

38. Each party agrees to pay its own costs and attorneys' fees in this action.

39. This Order constitutes the entire agreement between the parties.

AGREED AS STATED ABOVE:

CLEVELAND CORPORATION

By: 

Date: 9-24-09

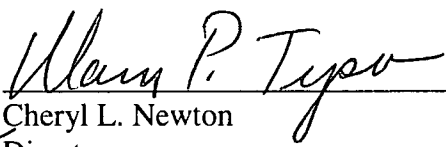
Name: BOB KUSAVINSKI

Title: PRESIDENT

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

09/30/09  
Date

  
for Cheryl L. Newton  
Director  
Air and Radiation Division

## Clean Air Act Verification Statement

**Directions:**

Complete statements 1 & 2.

Complete, sign, and date Seller Information section.

1. On today's date \_\_\_\_ / \_\_\_\_ / \_\_\_\_, I sold the following materials to Cleveland Corp.  
**(please check all that apply):**

(    ) refrigerator(s)

(    ) air conditioning unit(s)

(    ) automobile(s) containing air conditioning units

(    ) other \_\_\_\_\_

2. I certify that all refrigerants, as defined in section 608 of the Clean Air Act and 40 CFR 82, within these materials that had not leaked previously have been recovered from the materials prior to my delivery to Cleveland Corp. in accordance with procedures described in 40 CFR §82.156 (g) or (h) :

on      Date: \_\_\_\_\_

by:      Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Buyer Information	Seller Information ( <i>Please Print</i> )
<b>Cleveland Corp</b> <b>42810 N Greenbay Road</b> <b>Zion, IL 60099</b> <b>847-872-7200</b>	Date: _____
	NAME: _____
	CORPORATION: _____
Accepted by:	STREET ADDRESS: _____
	CITY/STATE/ZIP: _____
_____ Cleveland Corp.	TELEPHONE NUMBER: _____
	SIGNATURE: _____

## Refrigerant Recovery Log

[illegible]

**CERTIFICATE OF MAILING**

I, Betty Williams, certify that I sent the Administrative Consent Order,  
EPA Order No. EPA-5-09-113(a)-IL-06, by Certified Mail, Return Receipt Requested, to:

William J. Anaya  
Arnstein & Lehr LLP  
120 South Riverside Plaza, Suite 1200  
Chicago, IL 60606

I also certify that I sent a copy of the Administrative Consent Order, EPA Order  
No. EPA-5-09-113(a)-IL-06, by First Class Mail to:

Ray Pilapil, Manager  
Compliance and Enforcement Section  
Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62794

and

Harish Narayan, Acting Regional Manager  
Region 1  
Illinois Environmental Protection Agency  
9511 West Harrison Street  
Des Plaines, IL 60016

on the 30<sup>th</sup> day of September 2009.

Betty Williams  
Administrative Program Assistant  
AECAS IL/IN

Certified Mail Receipt Number: 70010320 0005 8915 9433